

REMARKS/ARGUMENTS

Claims 1-2 and 4-18 are active in this application.

Claims 1, 2, 4, 5, 17 and 18 are rejection. The process claims, 6-16, have been withdrawn from consideration. With respect to these withdrawn process claims, Applicants request rejoinder of the same upon finding the elected product claims allowable (referencing MPEP §821.04).

The rejections in view of JP 09-003573 (JP '573) or XP 002278686 (XP '686) have been maintained, primarily because of the misunderstanding of these references with respect to the amount of Nb and Co present in the prior art. In fact, neither JP '573 nor XP '683 describe anything relating to Nb and/or Co impurities. Further details are as follows.

It is again reiterated that the mere fact that a certain thing may result from a given set of circumstances is not sufficient to prove inherency. Inherency may not be established by probabilities or possibilities. Something that is inherent must inevitably be the result each and every time. There is no evidence of record that the materials described in either JP '573 or XP '686 contain pure titanium containing Fe, Co, and Nb in the amounts specified in the current set of claims. Contrary to the position taken by the Office, the Applicants have presented evidence which is indicative that the materials in JP '573 and XP '686 do not necessarily have the Nb and/or Co levels as claimed.

As alleged evidence that XP '686 describes a pure titanium material without Nb and Co content, the Examiner contends that the iodide or electrolytic titanium require certain impurity limits of Fe, Si, and others "with a balance of Ti (see Table 49, all the elements added together =100.000%). Nb and Co are not expected to be impurities of the high purity electrolytic Ti alloy taught by XP '686." (page 5 of the Office Action). However, this rationale is misguided. In fact, what Table 49 of XP '686 describes is that Ti content is

calculated “by difference” or in other Ti content is simply obtained by adding up all the listed impurities and subtracting from 100—the Table does not confirm that the material does not contain Nb and/or Co, it simply sets forth certain impurity limits such as Fe and Si. Thus, this is not any evidence that the material in XP ‘686 necessarily, each and every time has Nb and Co content as claimed. In contrast, Applicants have already provided more than adequate information to show that commercial preparations of Ti do not necessarily, each and every time have Nb and Co contents as claimed. Accordingly, Applicants request withdrawal of the rejection based on XP ‘686 is requested.

Turning to JP ‘573, the Office contends that the phrase “the remainder becomes [oxygen (O)] from Ti and an unescapable impurity by 900 ppm or less Formula (1)” from [0019] of the Computer Generated Translation of the document (page 3, 1st ¶ of the Office Action). However, reliance on this portion of JP ‘573 is misplaced because the section in question is not the correct translation from the original Japanese language. To this end, Applicants attach here an executed Declaration under 37 C.F.R. § 1.132 which states that the correct translation of this portion of JP ‘573 is (page 2, ¶4 of the attached Yashiki Declaration):

oxygen (O) is 900 ppm or less, and the remainder is Ti and
unescapable impurity

In other words, JP ‘573 describes a certain level of oxygen but does not describe nor hint at what levels of Co and/or Nb are present. Thus, there remains no evidence that the JP ‘573 necessarily, each and every time have Nb and Co contents as set forth in the pending claims. In contrast, Applicants have already provided more than adequate information to show that commercial preparations of Ti do not necessarily, each and every time have Nb and Co contents as claimed. Accordingly, Applicants request withdrawal of the rejection based on JP ‘573 is requested.

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For these same reasons, the rejection of Claim 2 under 35 U.S.C. § 103(a) in view of JP '573 or XP '686 is untenable and therefore should also be withdrawn.

Applicants request a Notice of Allowance in this case.

Respectfully submitted,

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